A **DOUGLAS CRISTO PRIMUS SIKAYUN v. THE GOVERNMENT OF THE STATE OF SABAH & ANOR**

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
LEONARD DAVID SHIM JC
[CASE NO: BKI-21NCVC-19-10-2019]
B 21 APRIL 2020

LAND LAW: *Acquisition – Compensation – Interest – Land compulsorily acquired by State Government – Delay in payment of compensation sum – Whether land owner entitled to statutory interest of 6% per annum in compensation sum from* C *date of acquisition till date of full payment of compensation sum – Land Acquisition Ordinance (Sabah Cap. 69), ss. 3, 16, 19 & 23*

By way of a *Gazette* notification, a portion of land ('acquired land') belonging to the plaintiff was compulsorily acquired by the Government of the State of Sabah ('first defendant'), pursuant to s. 3 of the Land Acquisition D Ordinance (Sabah Cap. 69) ('LAO'). Upon the second publication of the declaration in the *Gazette* on 15 February 2018, the acquired land was vested and deemed to have been surrendered to the first defendant. The first defendant, through the Director of Lands and Surveys Department ('second defendant'), offered compensation to the plaintiff in the sum of RM449,500 E ('compensation sum') for the acquisition of the acquired land. There was no mention that, should the plaintiff accept the offer, the plaintiff had to forgo all interests payable since 15 February 2018. The plaintiff accepted the offer but was only paid the compensation sum one year and seven months after the date of the second *Gazette* notification. The plaintiff filed the present F application, under O. 14A of the Rules of Court 2012 ('ROC'), for the determination of the question of law on whether the plaintiff was entitled to the statutory interest provided for under the LAO at the rate of 6% per annum in the compensation sum from the date of acquisition *ie*, 15 February 2018, till the date of full payment of the compensation sum *ie*, 23 July 2019.

G **Held (answering question in the affirmative):**

(1) The LAO is a statute enacted to protect the rights of land owners by providing for adequate compensation to be paid to the land owner. Section 23 of the LAO expressly empowers the court to award interest when awarding compensation for land acquisition. (para 26)
H

(2) There was no land reference or inquiry conducted by the judge under s. 16 of the LAO. Consequently, no award for compensation was made under s. 19 of the LAO to the plaintiff. Despite having sufficient opportunity to explain the long delay in paying the compensation sum, I the defendants failed to do so. Neither did the second defendant deposit the compensation sum in the court prior to 23 July 2019 or at any time. The defendants were, therefore, precluded from asserting that no compensation was awarded by the judge to defeat the plaintiff's claim for

interest under s. 23 of the LAO. To accede to such contention would be unconscionable and unjust as it would enable the defendants to take advantage of their own wrong. (paras 27 & 28)

(3) The defendant could not be allowed to contract out of the fundamental constitutional safeguard to pay adequate compensation together with interest as provided under the LAO by entering into a settlement agreement and not referring the land reference to the court. An award of interest on the compensation sum would be a fair and adequate compensation for the plaintiff's loss of all rights and use of the portion of the land from 15 February 2018 until the plaintiff received the compensation sum on 23 July 2019. (paras 34 & 35)

Case(s) referred to:

Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 CLJ 538 CA ***(refd)***

Ee Chong Pang & Ors v. The Land Administrator Of The District Of Alor Gajah & Anor [2013] 3 CLJ 649 CA ***(refd)***

Happy Estate Sdn Bhd v. The Government Of The State Of Sabah & Anor [2010] 1 LNS 405 HC ***(refd)***

IOI Edible Oils Sdn Bhd v. Sabah Ports Sdn Bhd & Anor [2009] 1 LNS 329 HC ***(refd)***

JW Properties Sdn Bhd v. Perbadanan Kemajuan Pertanian Selangor & Anor [2016] 1 CLJ 13 CA ***(refd)***

Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals [2014] 7 CLJ 597 FC ***(refd)***

Oxbridge Height Sdn Bhd v. Azizan Mohammad Ali & Anor [2014] 7 CLJ 135 HC ***(refd)***

Perantara Properties Sdn Bhd v. JMC - Kelana Square & Another Appeal [2016] 5 CLJ 367 CA ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(2)

Land Acquisition Ordinance (Sabah)(Cap 69), ss. 2, 3, 14(1), 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

Rules of Court 2012, O. 14A

For the plaintiff - M/s Lee & Thong
For the defendant - Jabatan Peguam Besar Negeri Sabah

Reported by Najib Tamby

JUDGMENT
(encl. 11)

Leonard David Shim JC:

[1] This is an application filed by the plaintiff (encl. 11) under O. 14A ROC 2012 for the following question of law to be determined by this court.

> Whether the plaintiff is entitled to the statutory interest provided for under the Land Acquisition Ordinance at the rate of six percent (6%) per annum on the compensation sum of RM449,500 (Ringgit Malaysia Four

A Hundred Forty-Nine Thousand Five Hundred) only from the date of acquisition ie, 15 February 2018 till the date of full payment of the compensation sum ie, 23 July 2019.

[2] This application is supported by the affidavit in support affirmed by Douglas Cristo Primus Sikayun on 30 December 2019 (encl. 12).

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[3] During the hearing of encl. 11 on 3 February 2020, learned counsel for the defendants informed the court that the defendants have no objection to encl. 11 and the evidence in the affidavit in support. The defendants agreed to submit on the point of law.

C **[4]** After perusing the pleadings, question of law to be determined and the undisputed facts in encls. 11 and 12 and applying the established principles on O. 14A in the decision of the Federal Court in *Kerajaan Negeri Kelantan v. Petroliam Nasional Berhad & Other Appeals* [2014] 7 CLJ 597, I am satisfied that the sole question of law in encl. 11 as agreed by both parties is suitable for determination under O. 14A and the court will hear and consider the

D submissions on the point in issue.

[5] The undisputed facts:

(i) that the plaintiff is the registered owner of a parcel of land comprised and held under native title 213068789 situated at Kampung Lampasan

E in the District of Penampang, Sabah, Malaysia ("the said land");

(ii) that by a *Gazette* Notification No. 33 of 2018 published in the *Gazette* on 8 February 2018 and repeated on 15 February 2018, 0.573 acres of the said land had been compulsorily acquired by the first defendant;

F (iii) that the 0.573 acres of the said land was compulsorily acquired under s. 3 of the Land Acquisition Ordinance (Sabah Cap. 69) (hereinafter referred to as LAO) for the "Project Lebuhraya Pan Borneo Sabah (Pakej WP6) Kota Kinabalu Outer Ring Road (KKORR), Daerah Penampang";

G (iv) that upon the second publication of the declaration in the *Gazette* on 15 February 2018, 0.573 acres of the said land was vested in the first defendant and had been deemed surrendered to the same. The plaintiff had lost all rights and use of the said portion of the said land on the date of the second publication of the said declaration;

H (v) that by a letter of offer dated 8 January 2019, the first defendant through the second defendant made an offer to pay the plaintiff compensation in the sum of Ringgit Malaysia Four Hundred Forty-Nine Thousand Five Hundred (RM449,500) only for the compulsory acquisition of 0.573 acres of the said land. There was no mention that

I should the plaintiff accept the offer that the plaintiff has to forgo all interests payable since 15 February 2018;

(vi) that in reliance of the contents of the said letter dated 8 January 2019, the registered valuers engaged by the plaintiff accepted the offer and submitted the relevant documents to the second defendant as requested;

(vii) that through his solicitors Messrs Lee & Thong *vide* a letter dated 25 June 2019, the plaintiff had requested for the payment of Ringgit Malaysia Four Hundred Forty-Nine Thousand Five Hundred (RM449,500) only as the agreed compensation sum to be paid failing which legal proceedings would be taken against the defendants; and

(viii) that on 23 July 2019, the plaintiff received the compensation in the sum of Ringgit Malaysia Four Hundred Forty-Nine Thousand Five Hundred (RM449,500) only ("compensation sum"), which was about one year and seven months after the date of the second *Gazette* notification.

Submissions Of The Parties

[6] In their written submission, learned counsel for the defendant submitted that the court may award interest pursuant to s. 23 only when the judge decides on the question and claims relating to the payment of compensation under the LAO. This is very clearly stated in that section.

[7] The procedure of the inquiry to determine the questions and claims relating to payment of compensation under the LAO is provided under ss. 14 to 24 of the LAO.

[8] In the current case, the plaintiff had accepted and received the compensation sum from the first defendant on 23 July 2019. Therefore, there was no dispute on the amount of compensation by the plaintiff that necessitates the plaintiff to invoke the provisions under the LAO.

[9] It is submitted by the defendants that as there was no dispute on the amount of compensation, the plaintiff's claim for statutory interest under s. 23 of the LAO does not arise at all.

[10] The statutory interest provided under s. 23 is part and parcel of the procedure in awarding compensation under the LAO. Therefore, it is humbly submitted that s. 23 cannot be invoked separately under the LAO. In other words, the application of s. 23 must be read together with other provisions under the LAO.

[11] As an example, the case of *Happy Estate Sdn Bhd v. The Govt of the State of Sabah and Anor* (2013) 5 BLR illustrates the inquiry of the assessment and determination of the amount of compensation and the award of interest pursuant to the LAO.

[12] In light of the aforesaid, it is submitted by learned counsel for the defendants that the plaintiff is not entitled to the statutory interest as provided under s. 23 of LAO since the plaintiff's case does not fall within the ambit of the LAO.

[13] In reply, the plaintiff's counsel submitted that:

Section 14 of the Land Acquisition Ordinance provides:

> DETERMINATION OF CLAIMS TO COMPENSATION
>
> Determination of questions by Judge.
>
> 14(1) All questions and claims relating to the payment of compensation under this Ordinance and to the apportionment of such compensation shall, save as is hereinafter provided, be submitted to a Judge.

[14] The definition of "judge" as found in the interpretation under s. 2 of the Land Acquisition Ordinance "means a Judge of the High Court sitting in Chambers".

[15] It is clear from the above, the correct forum for the determination of all questions and claims relating to the payment of compensation under the Land Acquisition Ordinance is before the High Court. The relevant law to consider in determining all questions and claims relating to the payment of compensation is the Land Acquisition Ordinance.

[16] Interest payable on the compensation sum under the Land Acquisition Ordinance is found under s. 23 of the Land Acquisition Ordinance.

[17] To address the defendants' submission – the defendants' main contention is that the court may only add the six percent interest provided for under s. 23 of the Land Acquisition Ordinance "in awarding compensation" as opposed to one where full payment of the compensation sum has been received, the plaintiff submitted that if interest under the Land Acquisition Ordinance is not allowed on the reasoning that the compensation sum has been paid, what then becomes of a landowner's right to his land from the time the said right is lost and surrendered till the time he is compensated? This reasoning suggests the time between the land being surrendered till the time compensation is paid will go unaccounted.

[18] Both the plaintiff and the defendants referred to the same High Court decision of *Happy Estate Sdn Bhd v. The Government of the State of Sabah & Anor* [2010] 1 LNS 405. It must be noted that in the *Happy Estate* case, the six percent interest was calculated from the date of the second publication of declaration in the *Gazette* until the date of payment.

[19] If interest is only payable in situations where compensation had yet to be determined by the court, that would suggest there is no urgency for the defendants to issue payment for the compensation of any compulsorily

acquired land after the second publication of declaration in the *Gazette*. The defendants may take their time to issue said payment depriving a landowner of his land or money.

[20] It was submitted that the plaintiff should not, at any point, be deprived of any benefit derived from the land the moment the right to the land was surrendered.

[21] In their submission in reply, the defendants submitted that s. 23 of the LAO may only be brought to light in cases where the amount of compensation is still in dispute and the amount payable has yet to be made. Section 23 of the LAO does not deal with interest payable solely. This means that, it has to be read alongside other provisions within the Ordinance.

[22] Hence, the question of whether the plaintiff is entitled to the rate of six percent (6%) per annum on the compensation sum should not be made with reference to s. 23 of the LAO. It is also further submitted that the fact that the compensation sum has been paid in full, the LAO should cease to apply upon receipt of the compensation sum.

[23] As with regards to the case of *Happy Estate Sdn Bhd v. The Govt of the State of Sabah and Anor* (2013) 5 BLR, the case merely illustrates the process of determination of compensation, which ultimately leads to the award of interest pursuant to the LAO. The plaintiff's case is completely different in the sense that the compensation sum has already been made in full and that there is no need for any determination of interest *via* s. 23 of the LAO.

[24] In the premises, the defendants submitted that the question of law hereinabove be answered in the negative and the plaintiff's claim should be dismissed with costs.

Court Findings And Decision

[25] First and foremost, art. 13(2) of the Federal Constitution, provides landowners with a constitutional safeguard to receive adequate compensation upon acquisition. In *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526, the Federal Court held that:

> [197] Article 13(2) is a constitutional safeguard to land owners to receive "adequate compensation" upon acquisition. Even as the Act authorises the State to acquire land from landowners, the law provides that the person deprived of his property must be adequately compensated.
>
> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term "adequate compensation" is not defined in the Act. In *Pentadbir Tanah Daerah Gombak v. Huat Heng (Lim Low & Sons) Sdn Bhd* [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356; [1990] 3 MLJ 282, the Supreme Court held that "the basic principle governing compensation is that the sum awarded should, as far as practicable, place

A the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired". (see "*Compulsory Acquisition and Compensation*" by Sir Frederick Corfield QC and RJA Carnwath).

[199] The above principle is known as the principle of equivalence. By this
B principle, the affected landowners and occupants are entitled to be compensated fairly for their loss. But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.

[26] Section 23 of the LAO expressly empowers the court to award interest
C when awarding compensation for land acquisition. The LAO is a statute enacted to protect the rights of landowners by providing for adequate compensation to be paid to the landowner including an award of interest for the loss resulting from the compulsory acquisition of their land.

[27] In the present case, there was no land reference or inquiry conducted
D by the judge under s. 16 of the LAO. Consequently, no award for compensation was made under s. 19 of the LAO to the plaintiff. The reason for not referring the plaintiff's claim to the court was because the second defendant had on 8 January 2019 offered a sum of RM449,500 as compensation for the compulsory acquisition of the plaintiff's land and the
E offer was promptly accepted by the plaintiff. Hence, a compromise or settlement agreement was concluded to which the parties are bound. After an unexplained delay of over 1½ years in the payment of the agreed compensation, the plaintiff through his advocates, Messrs Lee & Thong wrote to the defendant to demand for payment of the agreed compensation sum failing which the plaintiff will commence legal action in court to recover
F the compensation or debt owing to the plaintiff. The agreed compensation sum was only received by the plaintiff on 23 July 2019. Despite having sufficient opportunity in this action to explain the long delay in paying the agreed compensation sum, the defendants failed to do so. Neither did the second defendant deposited the said monies in the court prior to 23 July 2019
G or at any time.

[28] In the circumstances, it is my finding that the defendants are precluded from asserting that no compensation was awarded by the judge to defeat the plaintiff's claim for interest under s. 23 of the LAO. To accede to such contention would be unconscionable and unjust as it would enable the
H defendants to take advantage of their own wrong. See *JW Properties Sdn Bhd v. Perbadanan Kemajuan Pertanian Selangor & Anor* [2016] 1 CLJ 13.

[29] In the absence of a specific time frame in the LAO or the compromise agreement to pay the agreed compensation, this court takes the view that the
I landowner who has been deprived of his property or land has a legitimate expectation under the compromise agreement and art. 13 of the Federal

Constitution that the second defendant will act fairly and pay the agreed compensation sum without unreasonable delay. This was so because the plaintiff had lost all rights and use of the said portion of the said land on the date of the second publication of the *Gazette* notification on 15 February 2018. The first defendant's letter of offer for compensation was only made on 8 January 2019 which was duly accepted by the plaintiff. There was no mention in the said offer letter that should the plaintiff accepts the offer, the plaintiff would have to forego all interests payable since 15 February 2018. In consideration of the defendant's offer, the plaintiff had acted to his detriment by not referring his claim for any or any higher compensation to the court. See *Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 CLJ 538, wherein the Court of Appeal held:

> [50] The principle of legitimate expectation was first perceived by Lord Denning MR in *Schmidt v. Secretary of State for Home Affairs* [1969] 2 Ch 149, CA to denote something less than a right which may nevertheless be protected by the principles of natural justice. Put in another way, a legitimate expectation amounts to an expectation of receiving some benefit or privilege to which the individual has no right. It has been used by the courts on numerous occasions and in different contexts with the result that "there are many semantic confusions which have bedevilled this area of our law" (per Simon Brown LJ, in *R v. Devon County Council, ex p. Baker* [1995] 1 All ER 73, CA). In the words of Taylor J, in *R v. Secretary of State for the Home Department, ex p Ruddock* [1987] 2 All ER 518, "**the doctrine of legitimate expectation in essence imposes a duty to act fairly**." The duty to act fairly applies in the context of legitimate procedural expectations as demonstrated by the case of *R v. Liverpool Corpn, ex p. Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, CA. In *R v. Secretary of State for the Home Department, ex p. Ruddock* (*supra*), the substantive benefit was that individuals not falling within the government's published criteria for telephone tapping would not have their telephone calls intercepted by the security services.
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> [51] I venture to say that **even where no promise of a benefit has been made and there is no established practice of granting that benefit, the person concerned is, elementarily, entitled to be treated fairly**. Thus, stall-holders in a market are entitled to be consulted before charges are increased (*R v. Birmingham CC ex p. Dredger* [1993] COD 340). But residents in an old people's home to whom no promise of consultation has been made need not be consulted before the local authority closes the home (*R v. Devon County Council ex p. Baker* (*supra*) at p. 89 adopting the approach of *AG for New South Wales v. Quin* [1990] 93 ALR 1 at 39).
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> [52] Whether an expectation exists, is clearly a question of fact. So, if a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect. Here, the appellants expected the respondents to keep to their promises and so the appellants expect that the doctrine of legitimate expectation to protect them and the said doctrine can be invoked to protect them. (emphasis added)

[30] In *Perantara Properties Sdn Bhd v. JMC - Kelana Square & Another Appeal* [2016] 5 CLJ 367 the Court of Appeal held:

> (2) In construing provisions of a statute, regard must be given to the Federal Constitution ('Constitution'). The relevant presumption is that the Parliament does not intend to invade the rights accorded in the Constitution.

[31] In *Ee Chong Pang & Ors v. The Land Administrator of the District of Alor Gajah & Anor* [2013] 3 CLJ 649, the Court of Appeal held:

> (1) The Act is a legislation that empowers a State Authority to deprive a person of his property. As such, the provisions of the Act must be strictly interpreted in favour of the person who is to be deprived of his property so as to give meaning to the constitutional protection of a person's right to his property
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> (2) The Act was meant to safeguard the constitutional right to property under art. 13 of the Constitution, as it prescribes the procedure to be followed by the State Authority for the acquiring of a person's land, including the determination of the amount of fair and reasonable compensation to be paid.

[32] Applying a purposive interpretation of the LAO, and the established principles of statutory interpretation in the aforesaid cases, this court agrees with the plaintiff's submission that under s. 14(1) of the LAO, any question relating to compensation for compulsory land acquisition may be determined by the judge and this includes the question of whether the plaintiff could claim interest for the delay in the payment of the agreed compensation sum.

[33] In the present case, the defendants have kept the plaintiff out of the agreed compensation money which ought to have been paid to the plaintiff without unreasonable delay. As the defendants have the use of the money, they ought to compensate the plaintiff accordingly with interest. See *IOI Edible Oils Sdn Bhd v. Sabah Ports Sdn Bhd & Anor* [2009] 1 LNS 329.

[34] The defendant cannot be allowed to contract out of the fundamental constitutional safeguard to pay adequate compensation together with interest as provided under the LAO by entering into a settlement agreement and not referring the land reference to the court. See *Oxbridge Height Sdn Bhd v. Azizan Mohammad Ali & Anor* [2014] 7 CLJ 135, wherein the High Court held:

> (2) HDA is a **specific legislation enacted by the Legislature to protect the rights and interests of housebuyers** in their dealings with developers. It must therefore take precedence over s. 10 of the CA. As the SA did not comply with reg. 11(1) of the HDR, it was null and void and was thus, unenforceable. Both parties were bound by the terms of the SPA without any modification or waiver as recognised under the law. **To permit the SA to take effect over the statutory SPA would be to allow the parties to**

contract out of statute which would render it unlawful and invalid. The right of the respondents to claim for LAD under the SPA, therefore, remained intact and was not taken away by the SA.

(emphasis added)

[35] Hence, this court finds that an award of interest on the compensation sum would be fair and adequate compensation for the plaintiff's loss of all rights and use of the said portion of the said land from 15 February 2018 until the plaintiff received the compensation sum on 23 July 2019.

[36] Applying the established principles of law and equity to the facts of the present case and having read and considered the notice of application (encl. 11), affidavit and written submissions filed by the parties, this court would answer question 1 of encl. 11 in the affirmative. Consequently, the plaintiff's claim in prayer (1) of the statement of claim (encl. 2) is allowed and judgment is entered accordingly against the defendants with costs in the total sum of RM8,000 to be paid by the defendants to the plaintiff subject to payment of allocatur fee.

[37] This order shall take effect on the day after the date of expiry of the extended movement control order.